

## THE ROLE OF THE VICTIM<sup>1</sup> IN ICC PROCEEDINGS

### STAGE OF THE PROCEEDINGS

### ROLE OF VICTIMS

<p>1. TRIGGER MECHANISMS</p> <p>1.1. Prosecutor initiates preliminary investigations proprio motu on the basis of information received (RS Arts. 15.1 + 15.2). He may seek additional information, and receive written or oral testimony.</p> <p>Prosecutor concludes there is a reasonable basis to proceed with an Investigation and requests the Pre-Trial Chamber to authorize an Investigation (RS Art. 15.3)</p> <p>Prosecutor concludes no reasonable basis for an Investigation (RS Art. 15.6)</p> <p>1.2. A situation is referred to the Prosecutor by a State Party (RS Art.14) or the UN Security</p>	<p>Victims may send information to the Prosecutor; Prosecutor may seek additional information from, inter alia, NGOs or “other reliable sources that he or she deems appropriate”</p> <p>Prosecutor shall protect the confidentiality of information submitted, or take any other necessary measures, pursuant to his/her duties under the RS (Rule 46)</p> <p>A record will be made of anyone questioned (Rule 111) and the questioning may be audio or video recorded (Rule 112)</p> <p>Victims may make representations to the PTC (RS Art. 15.3)</p> <p>Prosecutor shall inform victims known to him or her or the VWU or their legal representatives – unless would pose a danger to investigation or life or well-being of victims and witnesses. Prosecutor may also give notice by general means if it could not pose a danger to same. Prosecutor may seek assistance of the VWU (Rule 50.1).</p> <p>Victims may make written representations to PTC (Rule 50.3)</p> <p>PTC may request additional information from victims, and may hold a hearing (Rule 50.4)</p> <p>PTC will give notice of its decision to victims who made representations (Rule 50.5)</p> <p>Prosecutor shall inform those who provided the information (RS Art. 15.6)</p> <p>Prosecutor shall notify those who provided information, in a manner that prevents danger their safety, well-being and privacy, or to the investigation/proceedings (Rule 49.1). Notice to include possibility of submitting further information (Rule 49.2).</p>
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<p>Council (RS Art.13(b))</p> <p>Prosecutor initiates an Investigation, unless he determines there is no reasonable basis to proceed (RS Art. 53.1).</p> <p>If Prosecutor carries out an Investigation and concludes there is not a sufficient basis for a prosecution, the PTC may review the decision (RS Art. 53.2 + 53.3).</p>	<p>In order to allow victims to apply to participate in the proceedings using the procedure set out in Rule 89, Court shall notify victims who have already participated in the proceedings or, as far as possible, those who have communicated with the Court in respect of the situation or case, of the decision not to initiate an Investigation or to prosecute. Court may order measures to give publicity to the proceedings under Rule 92.8 (Rule 92.2).</p>
<p>2. JURISDICTION AND ADMISSIBILITY</p> <p>Challenges to the jurisdiction of the Court or the admissibility of a case may be initiated by the Court itself, an accused, a State with jurisdiction over the case, a Non-State Party accepting jurisdiction or the Prosecutor (RS Art. 19.1-19.3)</p>	<p>Victims may submit observations to the Court in proceedings regarding jurisdiction or admissibility (RS Art. 19.3)</p> <p>Registrar shall inform victims who have already communicated with the Court in relation to that case or their legal representatives of any question or challenge of jurisdiction or admissibility (Rule 59.1). Registrar shall (in a manner consistent with duty regarding confidentiality of information, protection of any person and preservation of evidence) provide summary of grounds of challenge (Rule 59.2)</p>
<p>3. PRE-TRIAL</p> <p>Hearing before the PTC to confirm the charges before trial (RS Art. 61)</p>	<p>In order to allow victims to apply to participate in the proceedings using the procedure set out in Rule 89, Court shall notify victims or their legal representatives who have already participated in the proceedings or, as far as possible, those who have communicated with the Court in respect of the case, of a hearing to confirm charges (Rule 92.3). Registrar shall take necessary measures to give adequate publicity to proceedings and, in doing so, Registrar may seek cooperation of States and intergovernmental organizations (Rule 92.8).</p>
<p>4. TRIAL</p> <p>Proceedings before the Trial Chamber Part 6, RS</p>	<p>Where the personal interests of the victims are affected, Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial (RS, Art. 68.3).</p> <p>Participation of victims is governed by Rules 89 to 91, set out below under General Provisions.</p>

	<p>In a manner consistent with rulings under Rules 89 to 91, Registrar shall notify victims or their legal representatives participating in the proceedings in a timely manner of proceedings before the Court, requests, submissions, motions or other documents relating to them (Rule 92.5). Notification shall be in writing or, if not possible, any other form as appropriate (Rule 92.7). Registry may seek the cooperation of States (Rule 92.7). At request of a Chamber, Registrar shall give more generalised publicity to proceedings (Rule 92.8).</p>
<p>5. APPEAL AND REVISION Part 8, RS Parts 5 and 6 of the RS and rules governing proceedings and submission of evidence in the Pre-Trial and Trial Chambers will apply <i>mutatis mutandis</i> to the Appeals Chamber (Rule 149).</p>	<p>Victims may present their views and concerns in accordance with RS Art. 68.3 and Rules 89 to 91. Sub-rules 92.5 to 92.8 regarding notification shall apply.</p> <p>As regards appeals requiring leave of the Court, after reaching its decision on a request for leave to appeal, the Chamber will notify all those who participated in the proceedings giving rise to the decision (Rule 155.2).</p> <p>As regards appeals not requiring leave of the Court, the Registrar shall give notice of an appeal to all who participated in the proceedings before the Chamber that gave the decision that is the subject of the appeal (Rule 156.2).</p>
<p>GENERAL PROVISIONS REGARDING PARTICIPATION OF VICTIMS THAT APPLY AT THE PRE-TRIAL, TRIAL AND APPEAL STAGES OF THE PROCEEDINGS</p>	<p>A Chamber may seek the views of victims participating, or other victims, on any issue (examples are listed) (Rule 93).</p> <p>Procedure for application by victims to present their views and concerns (Rule 89):</p> <ul style="list-style-type: none"> <li>- Victims shall make written application</li> <li>- Chamber may reject if the person not a victim or does not fall within Art. 68.3</li> </ul> <p>Rules regarding legal representatives of victims (Rule 90):</p> <ul style="list-style-type: none"> <li>- A victim shall be free to choose a legal representative</li> <li>- Where there are a number of victims, Chamber may request them to choose a common legal representative; Registry may provide assistance, including by referring victims to a list of counsel</li> </ul>

	<ul style="list-style-type: none"> <li>- All reasonable steps to be taken to ensure distinct interests represented and conflict of interest avoided</li> <li>- Victims who lack means to pay a common legal representative chosen by the Court may receive assistance, including financial assistance, from the Registry</li> <li>- A legal representative of victims must have qualifications in Rule 22.1</li> </ul> <p>Rules regarding participation of legal representatives in the proceedings (Rule 91):</p> <ul style="list-style-type: none"> <li>- Chamber will give rulings regarding victim participation and legal representatives; they may participate in hearings unless intervention confined to written observations or submissions</li> <li>- If a legal representative wishes to question a witness, must apply to do so and Chamber will issue a ruling including regarding manner and order of questions (less restrictive in hearings on reparation)</li> </ul>
<p><b>6. REPARATIONS</b>  Court shall establish principles relating to reparations to victims, including restitution, compensation and rehabilitation (RS Art. 75.1).  Court may determine the scope and extent of damage, loss and injury to, or in respect of, victims, either upon request or on its own motion (RS Art.75.1).</p>	<p>A victim shall request reparations in writing and file with the Registrar (Rule 94.1). The request should include particulars listed in Rule 94.1.  At commencement of trial, Registrar shall notify those named in the request or identified in charges, any interested persons or states (Rule 94.2). Those notified may make representations to the Court under Article 75.3.  If Court decides to act on its own motion, Registrar notifies those against whom Court is considering making a determination, victims, interested persons or states (Rule 95.1). Those notified may make representations under Article 75.3. (Rule 95.1).</p> <p>Court shall notify victims or their legal representatives of reparation proceedings insofar as practicable and take all necessary measures to give adequate publicity to reparation proceedings to other victims, interested persons or states (Rule 96.1). In so doing, Registrar may seek cooperation of States and intergovernmental</p>

<p>Court may make an order directly against a convicted person (RS Art. 75.2).</p> <p>Court may order that reparations be made through the Trust Fund for Victims (RS Art. 75.2)</p> <p>Cooperation: in order to give effect to a reparation order, Court may seek cooperation from States Parties under RS Art. 93.1 (RS Art. 75.4).</p> <p>Enforcement: States Parties shall give effect to decisions relating to reparation in accordance with RS Art. 109 (RS Art. 75.5)</p> <p>Appeal: reparation orders may be appealed by a legal representative of victims, the convicted person or a bona fide owner of affected property (RS Art. 82.4).</p>	<p>organizations (Rule 96.2).</p> <p>Court may award reparations on an individualized basis or on a collective basis or both (Rule 97.1). At the request of victims or their legal representatives or the convicted person, or on its own motion, Court may appoint appropriate experts to assist in determining the scope or extent of damage, loss or injury, and to suggest options concerning the appropriate types and modalities of reparations. Court shall invite victims or their legal representatives, the convicted person or interested persons and States to make observations on the reports of the experts (Rule 97.2)</p> <p>Court may order that reparations be deposited with the Trust Fund for forwarding to victims, if it is impossible or impracticable to award directly to each victim (Rule 98.2).</p> <p>Court may order an award be made through the Trust Fund where the number of victims and the scope, forms and modalities of reparations makes a collective award more appropriate (Rule 98.3).</p> <p>Court may order an award to be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund (Rule 98.4).</p> <p>Other resources of the Trust Fund may be used for the benefit of victims (Rule 98.4), subject to criteria to be determined by the Assembly of States Parties in accordance with RS Art. 79.</p> <p>Prior notice need not be given to the person against whom a request is made and other interested parties, unless the Court determines it could not jeopardize the effectiveness of the measures requested (Rule 99.2). Once notification can be given, Registrar shall do so (Rules 99.2 and 99.3).</p> <p>If a State Party is unable to give effect to an order, it shall take measures to recover the value of property and assets and transfer to the Court (RS Art. 109.2 and 109.3).</p> <p>The Appeals Chamber may confirm, reverse or amend a reparation order made under Article 75 (Rule 153.1).</p>
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<sup>1</sup> The definition of a victim is set out in Rule 85 as follows:

“For the purposes of the State and the Rules of Procedure and Evidence:

- (a) “Victims” means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
- (b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.”